

[Name]
[Address]

PERMIT NO. Z-000-1-?

PERMIT TO ENTER

Subject to the following covenants, terms, conditions and restrictions, the San Francisco Bay Area Rapid Transit District (hereinafter "District") hereby grants permission to [Name] (hereinafter "Permittee") to construct, maintain and use [something], (hereinafter the "Improvements",) upon District property located between [?] and [?] and in the City of [?], County of [?], (hereinafter "Premises"), as shown on Exhibit "A", attached hereto and incorporated herein by reference.

1. Subject to Section 16 below, the term of this Permit shall commence on [?], 1996, and end on [?], 1996, provided, however, that at any time during the term, the Permit may be terminated by either party upon thirty (30) days prior written notice to the other party. The notice shall be sent certified mail, return receipt requested, to either: Permittee at the above address, Attention: [?], Project Manager; or to:

Real Estate Services
San Francisco Bay Area Rapid Transit District
1330 Broadway, Suite 1800
Oakland, California 94612-2517

Attention: Desha R. Hill, Department Manager

The notice period shall begin to run upon receipt of the notice.

2. The fee for this permit shall be calculated per the Fee Schedule in Resolution No. 4515, adopted by the District's Board of Directors. An application fee of \$200 shall be provided prior to approval of this permit. Fees which are expended on plan review and inspection will be billed to Permittee upon completion of the Improvements and shall be reimbursed to BART within thirty (30) days: *OR* A deposit of \$0 (the estimated amount of said fee) shall be provided prior to approval of this Permit. Fees in excess of the deposit which are expended on plan review and inspection will be billed to Permittee upon completion of the Improvements and shall be reimbursed to BART within thirty (30) days.

3. Permittee's right to use this area shall be non-exclusive and non-transferable, and shall be for the sole purpose of constructing, maintaining and using the Improvements. In no event shall District's property be deemed to be a public right-of-way.

4. Overnight parking is prohibited on District's property.

5. Permittee shall have the duty and agrees to exercise reasonable care to properly maintain District's property pursuant to this Permit, including, but not limited to, removing debris dumped or placed on the Premises during the term of this Permit, from any source, and to exercise reasonable care inspecting for and preventing any damage to any portion of District's property.

6. Permittee acknowledges that said Improvements constitute an encroachment upon District's property and agrees to construct, repair, maintain and use said Improvements in accordance with and subject to the provisions of this Permit, applicable provisions of the "General Terms and Conditions Relating to Utility Permits," attached hereto and incorporated herein by reference, and applicable state laws and local ordinances. Where there is a conflict between the provisions of this Permit and the "General Terms and Conditions Relating to Utility Permits," this Permit shall prevail.

7. Permittee agrees to notify District's Construction Liaison, Chris Koukis at (510) 464-6445, at least 14 calendar days prior to any use of the Premises. Should Permittee require any utility hook-ups, Permittee will obtain all necessary permits and pay all fees in connection therewith. Permittee shall not engage in any activity on District property until all necessary permits, licenses and environmental clearances have been obtained.

8. Permittee shall not use, create, store, or allow any hazardous materials and/or waste on the Premises. Hazardous materials are those substances listed in the Hazardous Substances List, Title 8, California Code of Regulations, G.I.S.O. Section 337-339, as may be amended from time to time, or those which meet the toxicity,

reactivity, corrosivity or flammability criteria of the above Code, as well as any other substance which poses a hazard to health or environment.

9. District shall at all times have the right to go upon and inspect the Premises and the operations conducted thereon to assure compliance with any of the requirements in this Permit. This inspection may include, but is not limited to, taking samples of substances and materials present for testing.

10. It is the intent of the parties hereto that the Permittee shall be responsible for and bear the entire cost of removal and disposal for hazardous materials or waste introduced to the Premises during Permittee's period of use and possession of the Premises. Permittee shall also be responsible for any cleanup and decontamination on or off the Premises necessitated by such materials or waste.

11. Permittee shall further hold District, its directors, officers, employees, agents or representatives harmless from all responsibility, liability and/or claim for damages resulting from the presence or use of hazardous waste or materials on the Premises during the Permittee's use or possession of the Premises.

12. Permittee agrees to assume responsibility and liability for all damages, loss or injury of any kind or nature whatever to persons or property, caused by or resulting from or in connection with this Permit, or which may arise out of failure of Permittee's performance of its obligations hereunder.

13. Permittee shall defend, indemnify and hold harmless District, its directors, officers, agents and employees, from all claims, demands, suits, loss, damages, injury and liability, direct or indirect (including any and all costs and expenses in connection therewith), incurred by reason of or in connection with this Permit, or any act, or failure to act, of Permittee, its officers, agents, employees and contractors or any of them, under or in connection with this Permit. Permittee agrees at its own cost, expense and risk to defend any and all claims, actions, suits, or other legal proceedings brought or instituted against District, its directors, officers, agents and employees arising out of this Permit, and to pay and satisfy any resulting judgments.

14. Permittee agrees that no easement, lease or other property right is acquired by Permittee through this Permit.

15. Permittee agrees to reimburse the District promptly for any damage done to the District property in connection with the construction, maintenance, operation, use or removal of said Improvements, or with restoration of the property.

16. Upon any use of District property by Permittee other than that authorized by this Permit, or upon failure of the Permittee to conform to any of the terms and conditions of this Permit, the District may terminate this Permit immediately.

17. Within 30 days of the expiration or earlier termination of a Permit, Permittee shall, at its sole expense, restore to its former condition all District property which has been disturbed by the Permittee, except as provided otherwise in the Permit. Restoration shall include, but not be limited to, removal of improvements, equipment, materials, debris, and the like, and repair of any damage. If Permittee fails to restore District property as required herein, the District may perform such restoration at Permittee's sole expense.

18. Insurance shall be provided by Permittee as stated in Exhibit B attached hereto and incorporated herein by reference.

SAN FRANCISCO BAY AREA
RAPID TRANSIT DISTRICT

By _____
Desha R. Hill
Department Manager, Real Estate Services

Date _____

ACCEPTED
[PERMITTEE]

By _____
Title _____

Date _____

(copy of map to be inserted here)

EXHIBIT "A"

INSURANCE

At all times during the life of this Permit, or as may further be required by this Permit, Permittee at its own cost and expense, shall provide the insurance specified as follows:

1. Evidence Required

At or before execution of this Permit, Permittee shall provide District with a certificate of insurance executed by an authorized representative of the insurer(s) evidencing that Permittee's insurance complies with this Article, including a copy of all required endorsements.

2. Notice of Cancellation, Reduction or Material Change in Coverage.

Policies shall be endorsed to provide thirty (30) days prior written notice of any cancellation, reduction or material change in coverage. Notices, including evidence of insurance, shall be forwarded to:

San Francisco Bay Area Rapid Transit District
Attention: Manager of Insurance
P. O. Box 12688
Oakland, California 94604-2688

3. Qualifying Insurers

All policies shall be issued by California admitted companies which hold a current policy holders alphabetic and financial size category rating of not less than A:VIII according to Best's Insurance Reports.

4. Insurance Required

A. Commercial General Liability Insurance for bodily injury (including death) and property damage which provides limits of not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) annual aggregate as applicable.

1. Coverage included shall include:
 - a) Premises and Operations;
 - b) Products/Completed Operations;
 - c) Broad Form Property Damage;
 - d) Contractual liability;

- e) Personal Injury liability; and
 - f) Cross-Liability and Severability of Interests.
2. Such insurance shall include the following endorsements, copies of which shall be provided to BART:
- a) Inclusion of BART, its directors, officers, representatives, agents and employees as additional insured as respects to Permittee's operations in connection with this Permit;
 - b) Stipulation that the insurance is primary insurance and that no insurance or self-insurance of BART will be called upon to contribute to a loss.
- B. Automobile Liability for bodily injury (including death) and property damage which provides a coverage limit of at least One Million Dollars (\$1,000,000) combined single limit per occurrence applicable for all owned, non-owned and hired vehicles.
- C. Statutory Workers' Compensation and Employer's Liability insurance for not less than Five Hundred Thousand Dollars (\$500,000) per accident applicable to Employer's Liability coverage for all employees engaged in services or operations under this Permit. The policy shall include broad form all-states/other states coverage.
5. Special Provisions
- The foregoing requirements as to the types and limits of insurance coverage to be maintained by Permittee and any approval of said insurance by District is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Permittee pursuant to this Permit, including but not limited to the provisions concerning indemnification. Should any of the work be contracted, Permittee shall require each of its contractors of any tier to provide the aforementioned insurance.